C.J.'s Court (Old Block)

Criminal Revision No. 664 of 2001

(Old No.2256 of 1985)

Nagar Palika,Haldwani -Revisionist

Versus

Jogendra Singh Anand alias Mangery Truck Transproter,Punjab Hotel,Nainital & another -Respondents.

Hon'ble Irshad Hussain.J.

This revision is directed against the judgment and order dated 06.09.1985 passed by learned Sessions Judge, Nainital in Criminal Revision No.157 of 1984, whereby the application in revision was allowed and the order dated 09.08.1984 passed by learned Judicial Magistrate, Haldwani in Criminal Case No.571 of 1984 under Section 155 of U.P. Municipalities Act was set aside.

I have heard the learned Sri Manoj Tewari, learned counsel for the revisionist, Sri J.C.Joshi, learned counsel for Respondent no.1 and Sri D.K.Sharma, learned A.G.A. for Respondent no.2.

It need to be pointed out at the outset that Section 155 of the U.P. Municipalities Act (for short 'the Act') provides for penalty for evasion of the octroi dues. One Jogendra Singh had transported wood within the local limits of Nagar Palika, Haldwani from the direction of Ranibagh Murdaghat in his trucks on 13.04.1983 without paying the octroi dues and thereby made himself liable to penalty under Section 155 of the Act. To enforce the provision, complaint was filed on 19.10.1983 and the cognizance was taken by the Judicial Magistrate on the same day summoning the above named defaulter for 19.11.1983. Lateron on 04.06.1984, an application under Section 473 of the Code of Criminal Procedure was moved by the Nagar Palika for having the delay in filing the complaint condoned. The learned

Judicial Magistrate went on to decide the petition for condonation of delay and by order dated 09.08.1984, condoned the delay. This is the order which had been assailed before the learned Sessions Judge, Nainital on the ground that the learned Judicial Magistrate had no jurisdiction to condone the delay after the complaint had earlier been filed and cognizance had been taken against the wrong-doer. The learned Sessions Judge considered the respective submissions of the concerned parties and found that the provision of Section 473 of the Code of Criminal Procedure does not permit order for condonation of delay subsequent to the order of cognizance of the offence taken against the wrong-doer and accordingly set aside the order of the learned Judicial Magistrate by the judgment and order dated 06.09.1985 which is the subject matter of present revision.

A plain reading of Section 473 of Cr.P.C. makes it obvious that the decision to condone the delay in initiating the criminal action against the wrong-doer has to be made before the cognizance of the offence is being taken against the wrong-doer by the competent authority or the Magistrate concerned. In the case in hand as is obvious from the facts mentioned above, the learned Magistrate had taken cognizance of the offence against the wrong-doer although the complaint was filed beyond time without any application for condonation of delay and also without any order to condone the delay having been passed by the learned Magistrate. The learned Sessions Judge has held that the procedure followed was unjust and without jurisdiction because the learned Judicial Magistrate was not empowered to condone the delay regarding limitation when it had taken cognizance of the complaint earlier. The observation of the learned Sessions Judge in view of the provision of Section 473 of the Code of Criminal Procedure clearly appears to be correct and the decision to set aside the order of the learned Magistrate, being legally proper, no interference in the impugned order of the learned Sessions Judge is warranted. In other words this revision has no force and is liable to be dismissed.

The revision is dismissed.

(Irshad Hussain, J.)

May 14, ..2002.
Bhagat.